

CHAPTER TEN

Technology: The New Paradigm in Trusts

If your head is spinning from all the information I have given you, I understand. While devising a decent plan for your trust isn't rocket-science, it definitely involves a lot of detail, details that you may not want to confront, let alone deal with every three years—the interval of time that I suggest you revisit your estate plan to ensure that it is up to date.

There is hope, however. Throughout the book, I have been teasing you with various ways emerging technology in the trust and estate arena can help alleviate many of the problems, as well as make their setup and execution far easier and more efficient. With the sophisticated yet workable software that is the basis of this new technology, there is the possibility of transforming an industry that operates as if it were still in the 1600s to an industry that should be responsive to the needs and desires of those it serves. My years of work and research in this field has led me to conclude that the industry has not changed much in the last four-hundred years because the disconnect between all the entities involved is too great. The drafter, professionals, and service providers are split in space and time from each other.

With technology driving the creation of our trusts, a trust will no longer be under the veil of secrecy that shrouds the entire industry. While I have not highlighted this as one of the many problems that plague trusts and trust creation, secrecy certainly contributes to the problems. People tend to think that the problems they suffer are unique to them. It is an industry that is traditionally based on confidential relationships and family money, so when a family runs into trouble,

they remain quiet. But the lack of communication over this entire subject has left a vacuum of information and an imposed ignorance by those who benefit from the industry. This general black box where not even our libraries provide a road map as to just how the system works has resulted in: widespread abuse, loss of assets, family hatred and general dysfunction. But because we are all using the trust system because we are accumulating more wealth, it is time to become vocal. *No one* should have to believe that there is nowhere for people to go and no better system available. If we, the consumers, demand better products and services then those who set up and administer our trusts will have to comply.

The only way we can demand this better product is if we incorporate the usable technology advanced computer software gives us into the system. The simple fact is that only by using the power new technology grants to us will the trust industry become more responsive. The benefits of this new technology are almost endless. Just to name a few: technology allows a different model that is better, more accountable, and more responsive to our wishes. As technology emerges in this area, terms used by one person or attorney will mean the same thing from person to person and attorney to attorney. The new technology provides an administrative process that is transparent and accountable. It allows decisions to be made within boundaries set by the grantor and accessed and tracked by the beneficiaries.

The new technology will allow you a new way of designing your trust and or will give you input into the decision made in the future eliminating discretionary decisions made on our behalf giving way to decisions made by us. The decisions will reflect our intent, values, goals, and eliminate broad discretionary decisions that benefit only the personal representative. The technology takes out what I have been calling the "time bombs" in the trust, those hidden decisions that cause the destruction of the trust estate and the family it is to benefit. It is linked to the all-important implementation plan and execution plans that are based on the directives we have outlined in our trust's design. It catches the inconsistencies, the mistakes, the bad decisions, the actions that should not be taken and the conflicts of interest.

And there is something even more exciting about this new technology. It can even help those trusts that are already in motion and currently under management. Once a trust is put in electronic form along with any other amendments, court orders etc., that may change its terms, these trusts too can be mapped into a predictable administrative plan.

A Trust's Real Risk

The idea of a trust really comes down to controlling your wealth and assets, and anytime you give control of your wealth and assets to someone else, you take on a risk that your plan will fail. Just as the professional fiduciaries want to minimize their risks as I've outlined them in chapter 6, both the grantors and the beneficiaries want to ensure as best they can that their plan won't fail. Only when the emerging trust technology becomes widely available will you be able to control and even sharply limit the risk of loss, the risk that your plan will not be implemented, and the risk that even if followed mistakes in its execution won't endanger the trust's assets.

While I've talked at length about the importance of having a good design, implementation, and execution plan, my technologist, Ernest Freeman, with input from Michael Besack, developed mathematical formulas dealing with the risk that impacts the trust and estate world. They were key in helping me recognize the three elements of a trust that everyone must consider, and because of all of our research, we were able to recognize each of the three elements of a trust by the risk they each presented. And while I've gone into depth about each stage of a trust's plan, what we call the "life cycle" of a trust I think it bears repeating the risks associated with each.

Design risk refers to inherent risk attributed to ambiguities, errors, and inconsistencies contained in the trust or will documents themselves. Amendments, evidence of interpretation, court interpretations, etc. all add to this risk. Risk under this category also includes risk associated with the assets of the trust or will, as well as conflicts, ambiguities, inconsistencies in applicable laws, regulations, and policies. There is even risk involved with the beneficiaries because much can happen,

both in status and in situation, between the time the trust or will is written and the time the trust or will springs to life.

Implementation risk of the trust or will is inherent in how well the grantor has defined for the trustee how to accomplish what is written in the trust or will. The risk, or lack of it, depends on how well the grantor has been able to answer how decisions are to be made: How are terms defined? How are the goals to be accomplished? What agents are to be employed? What parameters of performance are set? What are the markers of accomplishing the goals? When will a goal be determined accomplished or failed? How are assets to be managed in meeting the goals that have been set? What investments are to be made and when? How are constraints to be applied? How does the administration of the trust or will comply with existing and changing laws, regulations, and policies? How do the beneficiaries access their benefits in a predictable manner? What constraints do they have to overcome before benefits will be made available to them, and what triggers are automatic to get the gifts the grantor intends to the right people at the right time minimizing third-party intervention?

Execution risk refers specifically to whether the plan is properly performed. The risk, or lack of it, is tied to how well the grantor has anticipated the tasks of administration. Has the plan met time deadlines? Have the selected agents performed within the boundaries of their duty, applicable laws and regulations, and within the parameters of the trust? Is ongoing administration maintained at the highest level? Have checks and balances been put in place, and are they operating to assure that the conduct of our personal representatives meet the standards imposed?

Technology Controls Your Risk

Ensuring that you have adequate control over your trust in reality equates to minimizing the risk that your plan will fail, not be implemented, or will be executed badly resulting in a frustration of the goal and loss to your beneficiaries. Any one of the above risks individually or in combination can spiral the assets you leave into partial or total loss.

When we contemplate the number of areas of risk that can negatively impact the bottom line of our estate or trust, it is important

to understand the true lack of control we currently have on the outcome of the plan we have made for our assets and families. Our current system of estate planning, administration, and execution is premised on too many conflicting, ambiguous and subjective standards of performance for it to work well in today's society. Indeed it is entirely premised on "trust," trust that our representative will operate with integrity; trust that they will have the acumen and training to do the job; trust that the assets will be preserved as we intended; trust that outside influences and conflicts of interest do not invade or sidetrack decisions over our assets; trust that mistakes will be discovered and corrected; trust that fees and expenses will not consume the gift.

If on the other hand the grantor is able to consistently define the parameters and constraints that may limit the gifts he or she intends to bestow under the trust or will, the areas of ambiguity and risk begin to shrink. If his or her directives are linked to an implementation plan that guides the administrator seamlessly through the administrative process with 70 – 80 percent of the questions already answered by the grantor, again risk is reduced. When risk is reduced the grantor actually accomplishes his or her intended goal, and the heirs become the ultimate beneficiaries of the grantor's intended benefits.

Having seen again and again the inconsistent, subjective, self-serving, and negligent administration of estates and trusts by lay and professional administrators and trustees alike, it occurred to me early on that with the advent of computer technology there must be a better way. Why had the trust and estate industry remained untouched by the technological revolution that was impacting just about every phase of our lives in every other industry? I watched for twenty years anticipating that my job in the trust and estate arena both suing and defending erring trustees would be revolutionized by changes in technology that would guide the trustee and administrator seamlessly through a process that would help them "do it right."

After twenty years of anticipating change and none on the horizon, I concluded that I knew how to guide these estates and trusts through the process so liability could be avoided, the trust assets distributed in a timely manner, and disputes minimized. I realized that if I got the trust early enough, I could ultimately help the beneficiaries avoid up

to 90 percent of the problems that emerge by doing it right from the beginning. In order to do this, I knew I would have to find a computer whiz or two to help me see if software and services could be developed to provide parameters for the trustees and estate administrators to follow so that 1) decisions could be made within a "safety zone" and 2) the beneficiaries could be kept happy because all decisions were made in accordance with applicable legal standards. I knew that with technology used well, benefits would become predictable and the highest standard of accountability would be imposed on the whole trust industry. In short, problems would not emerge.

To my great fortune I met and convinced Ernest Freeman to work with me in my quest to empower the individual and family to protect themselves from later dissipation of their assets at the hands of strangers and to develop a system that allowed the chosen representative to be guided through the administrative process as defined by the grantor and applicable law. He is a talented software engineer with thirty years of technology experience in knowledge management systems and system design. He brought in computer-architecture technologist Michael Besack, and we went to work. In our seven-year journey together, we have studied the why's and how's associated with where trusts and estates go wrong and have devised a system that is not only more efficient and cost effective but one that better reflects the goals and wishes of the grantor. To this end, we have discovered more about how we all think, plan, and make decisions, and how we are impacted by culture, history, and our own unique way of looking at our assets and families.

Since I do not believe in the perfect trust or will or the perfect administrator or trustee, I believe that we should "routinize" (make routine) how we draft and implement our wills and trusts making decision by our personal representative predictable and measurable. By "measurable" I mean that we have set a standard in our plan against which our administrator's performance can be measured, and the only way to do this is with sophisticated and workable computer technology—in other words, a new trust technology.

Ernest Freeman with input from Michael Besack have researched and devised software and an architectural structure that provides a solution for

trusts that incorporates all the areas that I have talked about in this book. They have developed the architecture for the technology solution that I have been hinting at from the beginning because only with computers will a grantor have the kind of input into the design, implementation, and execution of his or her trusts and estates so his or her wishes are actually executed in a manner consistent with their wishes.

This software and trust architecture also benefits the estate planners as they will have tools to project their client's wishes into the future in a consistent predictable manner assuring that the plan they create has an administrative link. Trust officers will not have to guess at what was intended and will no longer incur the high risk associated with trust administration as 80 percent of the decisions will have been made by the grantor. However, while it is uniform in its approach, it's not a "cookie-cutter" solution. Rather, the grantor chooses the administrative services that fit his or her goals. It is a system that is designed to take you, the grantor, through the decision-making process answering specific questions regarding your family and assets. In short, it gives the grantor more control thus minimizing risk of loss.

Here's the good news: the emerging technology will allow us, along with whatever legal, accounting, and tax advisers we want, to adequately design, implement, and execute our trusts and estates at less cost. You as a grantor will be able to answer questions pertaining to your assets, goals, values, each beneficiary, etc., setting the boundaries of the trust so they can be linked to an implementation plan designed to accomplish your goals and wishes. It will then track a workable investment model based on your input or the input of investment advisors you have chosen and to applicable laws and standards of performance. The emerging technology is a dynamic plan, one that changes with input from you as events in your life, your family and assets change. Above all, it is a model that can incorporate huge amounts of data that can be referenced and cross checked; it can respond to changing conditions and events making life easier for everyone.

Here's the bad news: while we have developed the concept, designed the architecture, and vetted a series of ideas, we have not yet been able to develop the software into usable products and services. It is expensive to do so and we don't personally have the money to do it

on our own. The banks and trust industry aren't interested in funding it. They make money the way it is and are in fact invested in keeping your trust and assets under their control. When I made presentations to major banks, I met with comments like: "We make money the way it is." "We know we will get the trust business because there is nowhere else for it to go." "We are not feeling any pain in this area." With this attitude, we, the consumers, are the ones who lose.

So what follows is a glimpse into what emerging technology can do. I want to "wet your whistle" as the old saying goes so that you start thinking in different terms when you plan your trust or estate. I want you to start demanding a better model, more accountability, more transparency, fewer secret decisions, more responsiveness, fewer lawyers and lawsuits, more predictability, more protection of our assets and long term goals, and more protection for our children and families. And maybe there will be an intrepid reader or two who decides to step up and say, "I'll help." We will create a different model. (If you're one of them, visit www.fiduciarytechnologiesinc.com. We will love to hear from you!)

New Technology Lets You Do the Impossible

Why would anyone want to invest in this? Because emerging trust technology lets you step into the future. Through a series of decisions in what Ernest Freeman and I call "decision trees," the grantor can specifically customize the management and distribution of assets to his or her family meeting the goals he or she designates. With this new technology, you are allowed to plan for the expected and for the unexpected.

What we have found is that there are only so many life scenarios that can play out and you can anticipate and plan for about 80 – 85 percent of them. Granted, for the remaining 15 – 20 percent, you will have to rely on the integrity and honesty of your personal representative with guidance from you, but 15 – 20 percent is better than 100 percent reliance. By having more input into future decisions for your assets and family, it lessens the burden of parenting and reliance on your chosen representative. It also makes their job easier as they do not have to guess about what you intended. Liability for decisions made is also lessened. If you choose to educate your children through graduate school, it is

you who makes the decision not your personal representative. You set the parameters and boundaries for disbursement of funds. You set the conditions the beneficiary must meet to qualify for the educational benefit. It is not arbitrary. It is not subjective. It is predictable, consistent from representative to representative, and the beneficiaries can rely on it to let them know the conditions they must meet in order to receive benefits.

I have seen a trustee withhold funds for shoes in an effort to demonstrate to the beneficiary who was really in charge of her funds. I have seen beneficiaries denied funds for anything other than tuition where the student spent most of her time working so she could afford to live while she was in school. I have seen instances where the trustee arbitrarily stated that they knew what the term "education" meant and it didn't include a trade school.

Again, it is my belief that people should be empowered to make informed decisions for themselves. Give them the information and their available options, and they will usually choose what is best for them. Above all, I object to "big brother" and the imposition of power and control over others. I ran into this exact issue when I was creating my trust before I went in for spine surgery. My son was under-aged, and I needed to name a guardian. His father was dead, so instead of just guessing, I discussed my dilemma with my son and wrote in my trust options of people from whom he could choose as his guardian. But while I could let him know up-front that immediately upon attaining his majority (age eighteen) I granted him control over his assets with the guardian and two to three others as advisors to guide his decisions, I still feared that no matter how specific I was, I would still subject my son to an overbearing trustee. The lesson in all of this, as always, is to communicate and work with the people you expect to act on your behalf and work with those you designate as beneficiaries to assure that the gifts you bestow actually accomplish your intended purpose. However, were the new technology in this area available to me, I would have had the opportunity not only to structure my estate with the assurance that what I had planned would actually play out as anticipated, but the roles of the advisors and guardian I chose for my son would have been spelled out in more detail thus alleviating my fears.

Above all, the emerging trust technology allows the grantor to easily address contingencies. That is practically impossible in the way trusts and wills are structured today, but very easily done with new technology. Even events that are unlikely and improbable can be addressed, and that will give much better direction to those who are administering your trusts.

What Does This New Technology Look Like?

Have I teased you enough already? Are you chomping at the bit, wanting to find out how this stuff actually works? I don't blame you. It's powerful stuff. Computer software has become extremely sophisticated, so much so that it is able to detect patterns and even solve problems based on patterns and outcome. Emerging trust technology will do this with respect to your trusts and estates.

Take the all important category of values as an example. Right now, it is virtually impossible to incorporate your values into a trust in such a way that can guide your personal or professional representative in the decisions he/she makes. But if a pattern is created as to how decisions are to be made by our representatives with a value set applied to particular assets, beneficiaries, activities, and priorities, then it is fair to say that we have the ability to project our values into the future. With emerging trust technology, we can easily provide the all-important road map for our representatives as to how we expect them to accomplish our goals.

Remember the sample template I showed you in the last chapter concerning your values on education? The program takes what you've checked off and creates a pattern of values from it. All of the value patterns the software creates is premised upon the choices you make with respect to a series of questions about yourselves, your family, and your assets. These patterns set the value system you are comfortable with and then defines the parameters within which decision are to be made. It is customized to the individual and the assets with input coming from the grantor, not third-party strangers. The structure is dependent upon the modules of services and products you want employed. It is also designed to give you questions to answers that will set the stage for later administration, setting boundaries and parameters you define

and within which your personal representative is to operate. In this manner trustee discretion (making decisions based on what they think as opposed to what you want) is limited and trustee and beneficiary conduct within certain standards is clearly defined.

Until now the only way we could specify what we really wanted was through letters of instruction. Emerging technology in the trust and estate area allows us to have more input into decisions we would like to make for our families once we are gone. With it, the questions that we never thought to ask have been laid out for us to simply respond to. Through this we project ourselves into the future and leave a legacy of defined choices rather than allowing strangers or distant relatives to impose their values on our beneficiaries.

A Sample

In the first step in the trust software program, you will be directed to answer questions on a template similar to the template example I gave you in the previous chapter. You will check off hypothetical questions that set boundaries for decision making by your administrator. Here's a sample template relating to your definition of personal care when you age. To fill it out, you would simply check off whatever point fits you best and then fill in the blanks where appropriate.

Here's the template:

I want my assets and property to be utilized by my trustee for my own health care, maintenance, and support as follows:

I direct that _____ income and then _____ principal (including the sale) of my assets in the order set forth below shall be used for my care as set forth herein:

Account # _____ at _____

Account # _____ at _____

These shall be used by my personal representative to:

____ Maintain me in my own home at
_____ for as long as I shall live;

___ Provide in home care as necessary to maintain me in my home.

___ Transfer me to the following nursing and/or residential care facility at age ___ 80 ___ 90 ___ 100 ___ 110 ___ as my doctor (name _____) deems necessary. At this facility, I want to have a ___ bedroom; ___ I want a personal bathroom ___ access to outside, other _____.

___ Transfer me to live at _____ with _____.

___ Transfer me to hospice for end of life issues (name _____).

___ I have executed a living will that explains how I wish to be treated regarding end of life care.

I have defined the term "support" in letters of instruction which are incorporated herein.

The term "support" shall include payment from the trust for:

Housing which shall include but not be limited to:

___ Care of personal residence of grantor:
 ___ rent
 ___ taxes
 ___ insurance
 ___ maintenance repair
 ___ reconstruction
 ___ improvements
 ___ utilities
 ___ garbage
 ___ other _____

Residential Care or Nursing Home:

___ Fees and charges of care facility
 ___ extra-activity fees
 ___ drivers
 ___ taxi's,
 ___ transportation
 ___ entertainment

___ movers
 ___ Personal nursing
 ___ Other _____

I have defined the term "health" in letters of instruction and my living will which are incorporated herein

The term Health shall include payments from the trust for:

___ Health insurance
 ___ Uncovered medical bills
 ___ Homeopathic medication or treatment
 ___ Payment of a personal assistant to oversee payments and applications for benefit
 ___ Emergency care and services

___ I ask my personal representative to avail my trust of all available government benefits so as to preserve trust assets.

Priority of Claims Against Trust.

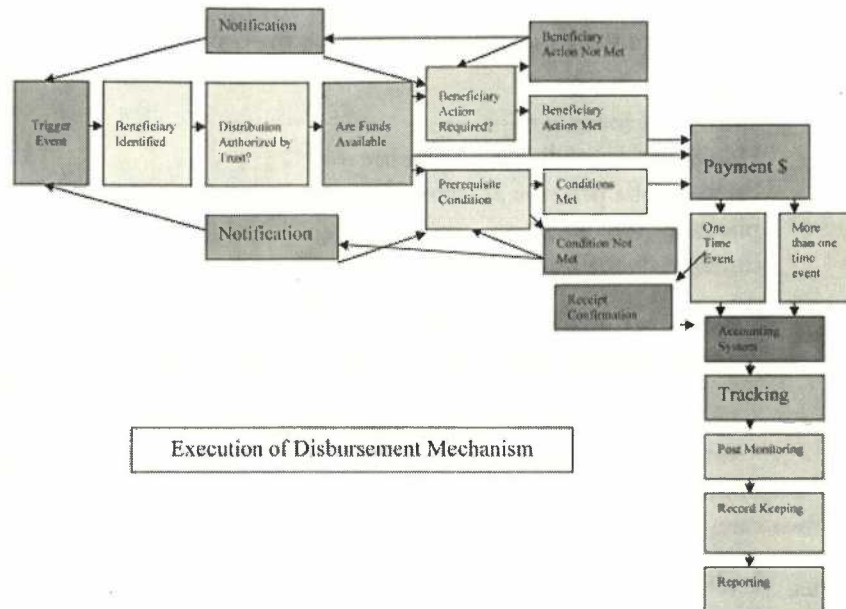
I list in order of priority the payment of funds with respect to my own care:

___ health care
 ___ support
 ___ travel

While these questions are not complete they constitute just a small sample of the questions you would be considering in the preparation of your will or trust, I hope you see that by simply checking them off and filling in the blanks as called for, you will be directing your personal representative in your own care. Here's the neat part. This is just the beginning of what happens. Your responses set boundaries for decision making. This gets integrated into your health directives, your investment plan, your decision tree I mentioned earlier. It is a flow chart that allows the computer program to ultimately tell you whether or not an investment the trustee wants to make works within the parameters you set or whether or not a beneficiary's request can be met.

The Decision-Tree Model

If you've ever worked with a flow chart, you know that the boxes represent various tasks or commands and the arrows represent the flow of information. This is how the decision-tree model in emerging trust technology works:



This particular decision tree is specifically for the execution of disbursements from the trust. There are other decision trees for all the other major tasks in a trust. How this particular tree works is quite fascinating. Take the "Are Funds Available" box. The data in this box comes from the information you checked off on various templates ranging from the trust's goals and your values to your assets and everything having to do with them. From this data, there's a whole subset of tasks that the computer will analyze depending on the types of assets that are available. It will consider such things as, are the assets liquid? (Can the trustee get to them fast?) Are there competing interests for the assets or are they clean? (You may have a partnership and so the asset may be much more difficult to liquidate than a stock.) Are there competing claims on the asset? (Is the wife living in the house the trustee has to sell?) The program goes through an in-depth analysis just

for this one particular box. Once it decides everything is a go, it then goes to the next decision box and performs the same analysis on that task. It will go from one box to the next until it has gone through the entire decision tree for the trust document.

But the analysis doesn't end there. Once you get the okay from the trust side, then it goes through a whole new process of deciding whether or not the request is legal. This part gets me really excited because the computer program not only thoroughly searches the trust, it also overlays all of the information from the trust with the all the possible legal constraints. For example, it will find out if the request complies with the Patriot Act. (If the beneficiary lives anywhere outside of the United States, there are all sorts of cash constraints.) It will ensure that the request stays within the bounds of Sarbanes Oxley (the Securities and Exchange Commission rules put into place after the Enron debacle of 2001). The computer program will also contain all the probate rules, tax rules, and whatever other applicable laws that are pertinent to trusts and estates *and* not only for the United States but eventually for any country that is pertinent to the beneficiaries. So say you have a beneficiary in South America. If you sent the money to her directly, the government may have all sorts of rules regarding the distribution of that money. While the beneficiary is qualified in terms of the trust to receive the money, the money can be held up by the government or may even be taxed. Not only would the program reference a whole series of international laws and alert the trustee to them, it would also tell the trustee how best to handle that request.

Finally, once the program has gone through the entire process of checking and cross-checking the entire trust and all applicable laws, it approves, or not, the request. If the request is approved, the computer then goes through the process confirming, with trustee input whether the check was cut, received, and recorded (the same process I outlined in chapter 7 in the subsection on execution plans.) This entire process from the first request to the final report is actually the process that should be followed when a request for distribution is made no matter if you have to do it manually or electronically. However, if you have the program in place, doing it electronically takes minutes instead of days, weeks, or even months. Plus you have a computer trail of decisions made,

compliance with applicable laws, analysis of the trust instrument and in short a transparent, reliable and repeatable process. Sounds interesting? If you've ever had to deal with a trust that isn't working, I suspect that this is especially exciting. But, again, here's the bad news. While the architecture of the program has been developed, the actual programs have yet to be completed because they need to be funded. (And again, if any of you are now chomping at the bit to help, please let me know at www.suefarley.com or www.fiduciarytechnologiesinc.com.) Emerging technology *will* dramatically change what we may expect; we just need to find a way to put it into place!

The Current System

Now that you have a taste of what the emerging trust technology can do, let me go back to how it is handled now to show you the difference. The current system only allows the tracking of the funds and does little to analyze the trust and its requirements to determine whether a distribution should be made and why. When a beneficiary makes a request for distribution, it may go first to the trust officer who in turn may send the request up for committee review. This requires someone to check the trust document in the file drawer for authority for the distribution and then an internal review is undertaken to determine whether the trust authorizes the distribution and whether there are sufficient liquid assets to meet the demand and further whether there is authority to protect the professional from liability for the requested distribution. If there is ambiguity, the ambiguity must be resolved. All in all this process can take anywhere from five to thirty days or longer. The actual determination of whether to make a distribution may ultimately fall to the "discretion" of the trust officer and whatever procedure or processes he/she/it chooses to employ. And, as is often the case, as the fiduciary exercises his/her/its discretion, the distribution may be denied with no further explanation.

Which would you prefer?

Technology Will Make the System Better

In the electronic world discretionary distributions are a thing of the past. The grantor has authorized the distribution or he hasn't. In such event the trustee simply plays by the laws of the state and the directives of the implementation plan. The execution process provides the requisite checks and balances to assure that the event which has been triggered receives an adequate response in a timely manner. Delays are unnecessary as the trust document has already been scanned and processed for permission and the assets checked for available funds. This type of mechanism tracks the decisions behind the numbers. The above example is just one in a thousand event-tracking mechanisms that can be electronically implemented to assure a complete and accurate history of decision making, due diligence, and circumstances at the time so second guessing later about an earlier decision is kept to a minimum.

Benefits for the Trustee

While this short section might not be of interest to those of you who are faced with creating or modifying your existing estate plan or trust, it should interest the professional trustee very much. The new technology being developed will alleviate much of the liability and a huge amount of risk that any trustee faces. Technology will facilitate the role of the trustee by providing for more input by the grantor and more accountability by the trustee or administrator. Accountings and reports are required annually and decision making by the trustee is made within boundaries set by the grantor. With emerging technology, the grantor will have anticipated and addressed 80 percent of the decisions that have to be made relieving the personal representative of responsibility for them. The new trust technology will neutralize the position of the personal representative. No longer will they sit with absolute authority as they control your assets; rather they will truly be an administrator, simply following the directives of the trust.

Technology Standardizes a Trust

The trust or estate is really nothing more than a mechanism to transfer assets from one party to another. If this transfer is viewed from the

perspective of creating goals and mapping of mechanisms to accomplish those goals, the transfer of assets is exponentially simplified. Trusts were originally set up in feudal times in order to protect an estate from having to pay “homage”—taxes basically—to the king. Medieval kings were notoriously unpredictable and would levy huge taxes to support the king and his holdings. We are no longer dealing with that mentality. Instead we have taxing requirements that are predictable and can be mapped against our goals of maximizing the benefits that go to our heirs and not third parties. If we map the goal in the original will or trust and then link it to a process that is defined by applicable standards and procedures for accomplishing those goals, the input of third parties and discretionary authority is eliminated by 80 – 90 percent. If the computer program sets up a decision tree as to how we want our assets to be handled under certain circumstances, we can anticipate events and plan for them. It takes much of the guesswork out of decision making, and as I’ve been saying all along, I would rather make the decisions about my assets for my family than have a third party do it for me.

The implication of “personal trust” is that each is unique and requires “personal” handling. While there are admittedly very large and complex trusts than can be considered unique, the vast majority of personal trusts are far from unique. Most personal trusts are composed of parts that come from a well known and relatively small set of standard components and activities. While the set of possible events that might occur in a single given trust might seem difficult to predict, the set of possible events that can occur in *any* trust are known and constitute a relatively small set.

To put this idea in numeric perspective: you can look at each of the millions of existing personal trusts as being unique and each requiring a unique administrative action, or see that the totality of trusts consists of components and activities numbering in the 100’s, and the possible events that can occur is also on the order of 100’s. The power of abstraction works in this way: by recognizing the similarity of trust components and activities and abstracting them into common classes in a process called “resolution,” one can build a rather compact library of standard parts and actions. Then any trust can be logically

reconstructed using this library. This library maps the entire trust space: the set of all possible trust structures and actions.

Since inception the trust world has been so focused on “personal” service that it has failed to map out and organize the trust space and develop an appreciation of the power of abstraction. To draw on a similarity: at one time most homes built in the United States were truly unique just as when trusts were only used by the very wealthy, they could be unique. But today almost every new home is simply a combination of very standard design components. That doesn’t mean that all houses look the same. Your trust will be personalized to you just as any house has its own unique features even though it is still based on a very standard model.

In short, the uniqueness of trusts is not all that unique, but by standardizing the trust process, the role of the trustee can be broken down so that technology can be introduced into the administrative process. In this regard truly personalized service can be provided. The capability of audit controls, of checks and balances, and of monitoring performance for quality and legal compliance becomes possible.

My Plea

In 1984, standing in front of that courtroom in San Francisco, I never imagined that I would have spent a large part of my professional life having to deal with the myriad of problems that plague the trust industry. I sometimes still can’t believe the problems I run into, and I can’t help but think, every day, that so much of what I see is preventable. The money these people have to spend paying me could be spent on their families—if the person who set up the trust would have known what I know now.

Your money should benefit you, your children, and your heirs. Instead, because the system is set up so badly and those that benefit by the bad setup and management profit so considerably, you and those you love end up the losers. I truly believe that it will only take one bank or trust company to adopt a different model. That can be an existing entity or an entirely new one. Until that happens, however, we as consumers can demand—through the way we write our trusts and the

way we plan our estate—more accountability and more responsiveness in the way our trusts are administered.

Once the new system is unveiled, it will transform how we plan our estates and trusts; it will also change how those we name as administrators and trustees take care of our assets and our families. The new trust technology will better protect everything having to do with a trust. In a way, it's like oil. It's taken us thirty-five years to figure out that we shouldn't be dependant upon Middle Eastern oil for our energy. We are now pushing the car companies to develop alternative-fuel vehicles, but it's taken all those years to effect change because too many people were invested in keeping the status quo because they made money the way it was.

The trust and estate industry has not changed because those invested in the current system make money the way it is. We and our families lose because we have no where else to go. We are subject to whatever fees and charges are imposed; we are dependent upon strangers and an untrustworthy system. On the positive side, my partners and I at Fiduciary Technologies Inc. know how to fix it. Once the new technology is put into place, a whole new service industry will evolve with new accountability, predictability, and trustworthiness that is so lacking in the current system. To take a concept from Thomas Allen: when we begin to reflect upon the current system and search diligently for answers to protect what we hold most dear, we will become wise masters directing our energies and thoughts toward the common goal of making the system better for everyone.

Begin by demanding a better model of trusts and more accountability from our trustees. Demand that you get an electronic copy of your trust so you will be ready to use the new technology when it is released. Remember all we need is one bank to do it differently and we will never retreat to the poor model that currently exists. It's sort of like the ATM machine. Why would we ever want to return to standing in line for hours waiting for the bank to give us our money now that we can just pop in our card, get our money, and go?

Disaster-proofing our estate plans is our responsibility. The emergence of technology so long in coming to the field of trusts and estates will allow us to shape our trusts and estates in a manner that

gives directives for our own care and the care of our families. It will ensure that our wishes are implemented. I started this book by saying that I was going to educate you. I now end it with a call to action. *We* must change the trust and estate industry to adequately represent us. Are you ready?